

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN HEMENWAY,

No. C-11-00505 DMR

Plaintiff(s),

v.

**ORDER DISCHARGING ORDER TO
SHOW CAUSE AND INSTRUCTING
PLAINTIFF TO USE THE COURT'S
ELECTRONIC CASE FILING SYSTEM**

ERIC K. SHINSEKI,

Defendant(s).

On April 9, 2012, Defendant filed a motion to dismiss Plaintiff's complaint. [Docket No. 43.] Plaintiff, who is proceeding *pro se*, had until April 27, 2012 to file an opposition or a statement of non-opposition. He filed neither. On May 3, 2012, the court ordered Plaintiff to show cause by May 10, 2012 why it should not grant Defendant's motion due to Plaintiff's failure to file a response. [Docket No. 47.] Plaintiff responded to the order to show cause on May 15, 2012 – five days late – lodging the document with the Court and attaching a proposed opposition to Defendant's motion. [Docket No. 49.]

Plaintiff's response troubles the court in several ways. Plaintiff asserts that he failed to file his opposition on time because he had not received discovery from Defendant. Even assuming this statement to be true, Plaintiff did not notify the court of his difficulties and request an extension of time to file his opposition. Moreover, during the August 10, 2011 case management conference, Plaintiff asked for – and was granted – permission to participate in Electronic Case Filing ("ECF").

1 [See Docket No. 33.] He therefore should have electronically filed all subsequent communications
2 with the Court, including any motion for an extension of time to submit his opposition, as well as the
3 untimely response to the court's order to show cause.

4 Nevertheless, in an excess of caution stemming from Plaintiff's *pro se* status, the court
5 DISCHARGES the order to show cause and GRANTS Plaintiff leave to file his opposition to
6 Defendant's motion to dismiss. The court also GRANTS Defendant until May 29, 2012 to file its
7 reply.

8 The court ORDERS Plaintiff from this point forward to participate in this action via ECF.

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10 IT IS SO ORDERED.

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12 Dated: May 18, 2012

